

EVOLUTION, INC.,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	No. 01-2409-CM
)	
SUN TRUST BANK, et al.,)	
)	
Defendants.)	
)	

On May 12, 2004, this court granted in part and denied in part Defendants' Motion for Summary Judgment. The matter now before the court is plaintiff's Motion for New Trial; Amendment of Judgment (Doc. 199).

Plaintiff filed its Motion for New Trial; Amendment of Judgment within ten days of this court's May 12, 2004 Order. Accordingly, the court will construe plaintiff's motion as a motion to alter or amend judgment under Rule 59(e). *Venable v. Haislip*, 721 F.2d 297, 299 (10th Cir. 1983); Fed. R. Civ. P. 59(e). A Rule 59(e) motion to alter or amend judgment is essentially a motion for reconsideration. *Henry v. Office of Thrift Supervision*, 1993 WL 545195, at *1 (D. Kan. Dec. 28, 1993) (citing *Hilst v. Bowen*, 874 F.2d 725, 726 (10th Cir. 1989)), *aff'd*, 43 F.3d 507 (10th Cir. 1994).

Moreover, a party cannot invoke Rule 59(e) to raise arguments or present evidence that should have been

set forth in the first instance or to rehash arguments previously considered and rejected by the court.

Federated Mut. Ins. Co. v. Botkin Grain Co., 856 F. Supp. 607, **609 (D. Kan. 1994)**. Whether to grant or deny a Rule 59(e) motion is within the district court's sound discretion. *Phelps*, 122 F.3d at 1324.

II. Analysis

Plaintiff requests reconsideration for each of its claims dismissed on summary judgment. For all but one of these claims, however, plaintiff raises new arguments not previously raised in its response to defendants' motion for summary judgment. The purpose of Rule 59(e) motions is "reconsideration, not initial consideration. Thus, parties should not use them to raise arguments which could, and should, have been made before judgment issued." *United States ex rel. Noyes v. Kimberly Constr., Inc.*, 2002 WL 1722139 (10th Cir. 2002) (citing *Jorge Rivera Surillo & Co. v. Falconer Glass Indus.*, 37 F.3d 25, 29 (1st Cir. 1994) (internal quotation marks omitted)). Plaintiff has not argued that it was somehow precluded from originally articulating these arguments. In addition, plaintiff did not present any newly discovered evidence, nor did it establish a manifest error of law.

Plaintiff's motion for reconsideration makes one argument previously raised but not directly addressed in the court's decision. Plaintiff argues that the court's decision in granting defendants' motion for summary judgment on the issue of fair use of copyrighted software was in error because the decision was based on the court's incorrect assumption that defendants acquired plaintiff's source code by reverse engineering. More specifically, plaintiff argues that defendants never asserted that it obtained plaintiff's source code using reverse engineering. Upon a thorough review of the summary judgment briefs, the court acknowledges this to be the case. The court's opinion, however, did not refer to defendants' use of reverse

engineering in its analysis. Further, the court's decision relied most heavily on *Assessment Tech. of Wisc., LLC v. WIREdata, Inc.*, 350 F.3d 640, 645 (7th Cir. 2003), the facts of which did not involve reverse engineering. Therefore, while plaintiff's arguments regarding this issue are not new, they nevertheless fail to clearly establish a manifest error of law. Accordingly, the court hereby denies plaintiff's motion for reconsideration.

IT IS THEREFORE ORDERED Plaintiff's Motion for Reconsideration (Doc. 199) is denied.

Dated this 23rd day of September 2004, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge